others are disposed of by the opinion of this court in Boston *v.* Lecraw.

For these reasons, the judgment is reversed, and *venire de novo* awarded.

FELICITÉ FLETCHER HIPP, AND MARIA ANTONIO FLETCHER HIPP, ALIENS, AND RESIDING, THE FORMER IN VERA CRUZ, MEXICO, THE LATTER IN THE CITY OF MADRID, SPAIN, FOR THEMSELVES AND ON BEHALF AND FOR THE USE OF AUGUSTIN CUESTA, JAVIERA CUESTA, AND FELICITAS CUESTA, ALIENS, THE FORCED HEIRS OF ADELAIDE FLETCHER HIPP, DECEASED, *v.* CELINE BABIN, WIDOW OF URSIN JOLY, AND OTHERS.

A court of equity will not entertain a bill, where the complainants seek to enforce a merely legal title to land; and in the present case, in the absence of allegations that the plaintiffs are seeking a partition, or a discovery, or an account, or to avoid a multiplicity of suits, the bill cannot be maintained.

THIS was an appeal from the Circuit Court of the United States for the eastern district of Louisiana, sitting in equity.

The facts of the case are stated in the opinion.

It was argued by *Mr. Smiley* and *Mr. Perin* in a printed argument for the appellants, and orally by *Mr. Taylor* for the appellees.

The manner in which the counsel for the appellants sought to sustain the equity jurisdiction of the court in the case was as follows:

In the opinion of the judge of the Circuit Court, the cause was not one over which the equity side of the court had any jurisdiction. The title being merely legal, and the documents upon which the title rested being accessible to all parties, there was "a case where plain, adequate, and complete remedy may be had at law." Several cases were cited and relied upon to sustain this opinion. But without referring to them, we may observe that this case is distinguished from all those cited, in this: that no objection is raised in this case by the defendants to the jurisdiction, neither in the pleadings nor upon the argument. It was not raised in the Circuit Court, and we are assured by the opposite counsel that it will not be in this. The objection was raised in some form, either by demurrer or in argument upon final hearing in all the others.

In the case of United States *v.* Sturges et al., (1 Paine C. C. R., 525,) it was objected, at the hearing for the first time, (not

by the court, but by the party,) "that there was a want of equity apparent on the face of the bill in two particulars," &c.

The court observes:

"There are several answers to be given to these objections. If, admitting the charges or facts stated in the bill to be true, there is no foundation in equity for the relief prayed, it was a proper cause for a demurrer, and the objection comes now with less weight than it would at an earlier stage of the proceedings." (See p. 531.)

The case of Pierepont *v.* Towle (2 W. and M., 24) we conceive to be quite as far from establishing the doctrine upon which this bill was dismissed. After a thorough examination of a great many authorities on the point, the judge says, (p. 35:)

"But the correct rule probably is, that a respondent may and usually should demur, if it appears, on the face of the bill, that nothing is sought which might not be had at law."

Without pursuing the authorities further, and even admitting, for the sake of the argument, that the judge was correct in his views of the authorities relied upon as a matter of law and practice, still we contend, and will endeavor to show to your honors, that he has fallen into an error on the facts exhibited in the record. He observes:

"The bill in the present case furnishes no reason for an application to the court of chancery, arising out of any particular condition of the parties; nor that a court of chancery is possessed of means to render a relief better suited to the claims of the case."

Now, with all deference, we conceive there are many distinct and separate grounds of chancery jurisdiction in the record. Although no ground for the interference of a court of chancery is shown by the bill, yet, if it appear in a supplemental bill, replication, answer, or any subsequent proceeding, the jurisdiction will be maintained. (Craft *v.* Bullard, 1 Smedes and M. Ch. R., 373; Lafayette Ins. Co. *v.* French et al., 18 How., 404.)

In the former case, the chancellor stated that he would have dismissed the bill, had not the answer disclosed the only ground upon which equity could take jurisdiction.

Among the undoubted grounds of jurisdiction presented by the record, are:

First. To avoid a multiplicity of suits. It appears in the original bill that five persons, and others, were sued in the State court in 1824. On filing the record from that court, it is shown that five separate suits at law were brought for the land included in the bill. The fact is admitted in the plea, and also in the answers of the defendants, by setting out the

subdivisions of the lands, and the parcels held by them, respectively.

This is one of the exceptions, in the case of Welby *v.* Duke of Rutland, to the general rule that chancery will not entertain suits upon legal titles merely. In that case, none but the appellant and respondent were concerned in the question, and there was no pretence for avoiding vexation or a multiplicity of suits at law. But why mention this circumstance at all, if it was not intended to recognise the right of going into chancery where five suits at law, or even a less number, could be united in one bill in equity? It appears clear, that if your honors acknowledge the principle above stated, that the jurisdiction may be shown by any part of the record, you will entertain this cause upon this ground, if upon no other. Whatever may be said of the facility afforded by the civil-law practice of the courts of Louisiana, to give relief in cases where, in the common-law States, the equity jurisdiction is undoubted, the expense and "other vexations" of a multiplicity of suits cannot be avoided there, any more than in Massachusetts or Mississippi.

The remedy, then, as it appears by this view of the case, not being as full and complete at law, the court would entertain jurisdiction on the rule established in Boice's Ex. *v.* Grundy, (3 Pet., 215; 9 Wheat., 842; 4 Wash., 202, 205.)

Second. Another class of cases, in which chancery will lend its aid for relief, is in matters of trust.

Thus, "if a man intrudes upon the estate of an infant, and takes the profits thereof, he will be treated as a guardian, and held responsible therefor to the infant in a suit in equity. (2 Story Eq., sec. 1,356; Ibid., sec. 511; 1 Mad. Ch., 91; Carmichael *v.* Hunter, 4 How., Miss., 315; Nelson *v.* Allan, 1 Yerger, 360; 8 Beaven, 159.)

In the last case, the equity jurisdiction was maintained upon a suit, by a person of full age, for mesne profits, accruing while he was a minor; "such disseizor being viewed in chancery as guardian, bailiff, or trustee." In Carmichael *v.* Hunter, it was admitted that this circumstance was the only ground of jurisdiction; as the title set up by complainant was legal, and an action for rents and profits a legal remedy.

Third. For discovery.

The discovery by defendants of their titles, the particular portions of the plantation claimed by them, and the time their possession and liability for rents and profits commenced, was material to complainants in making out their case.

Fourth. For partition.

"The necessity for a discovery of the titles, the inadequacy

of the remedy at law, the difficulty of making the appropriate and indispensable compensatory adjustments, the peculiar remedial process of courts of equity, and their ability to clear away all intermediate obstructions against complete justice," are grounds upon which "these courts have assumed a general concurrent jurisdiction with courts of law, in all cases of partition. So that it is not now deemed necessary to state in the bill any ground of equitable interference." (1 Story Eq., sec. 658.)

Fifth. The remedy at law is not plain, adequate, and complete.

The record shows that there are five sets of defendants, each claiming separate and distinct subdivisions of the plantations in controversy. At law, complainants would have to commence by five distinct petitory actions, against the five sets of defendants. And partition could only be made at law by giving them three-fourths of each subdivision, which would divide the two plantations, of only thirteen arpens front, into ten tracts, five of which would belong to complainants, and each of which would be separated from the other by the five small tracts allotted to the defendants. This would so cut up the plantations as greatly to injure the interest of all parties. In such cases, courts of equity may decree a sale, or pecuniary compensation for owelty or equality of partition, which a court of law is not at liberty to do. (1 Story Eq., sec. 654, 656, 657.)

The long and difficult accounts to be taken on one side for rents and profits, and for the value of improvements on the other, make the case more suitable for a master in chancery than for a jury.

Catharine Hipp was the owner of one undivided fourth of the lands in controversy; that portion she could and did sell to Daniel Clark. Not having complied with the formalities required by law, she could not and did not sell the other three-fourths belonging to complainants. (C. C., 2,427; 12 Rob., 552; Fletcher *v.* Cavallier, 4 La., 267.)

Clark never was in actual possession of any part of the land, and could only be in the constructive possession of the one-fourth conveyed by Mrs. Hipp. And he could only convey the one-fourth that belonged to him. (C.C., art. 2,427.) There is, therefore, no question of legal title properly in controversy in this suit. The defendants having illegally taken possession of the whole estate, while complainants were infants, and received the rents and profits for a series of years, the whole scope of the bill is substantially a bill for partition and account between tenants in common.

"This court has been called upon to consider the sixteenth

section of the judiciary act of 1789, and as often, either expressly or by the course of its decisions, has held that it is merely declaratory, making no alteration whatever in the rules of equity on the subject of legal remedy. It is not enough that there is a remedy at law; it must be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration as the remedy in equity." (Boyce's Ex'r *v.* Grundy, 3 Pet., 215.)

In this case, although the bill may not, yet the whole record does show particular circumstances for the necessity of the court's interposition to prevent multiplicity of suits, other vexation, and for preventing an injustice irremediable by a court of law.

In Louisiana, the distinction between courts of law and equity is unknown. All remedies are, in fact, both in form and substance, equitable. We look to the English chancery practice, at the date of the adoption of the Constitution, for the equity remedies of the United States courts. Otherwise, the equity jurisdiction of the United States courts would be abolished in half the States of the Union. (Gordon *v.* Hobart, 2 Sum., 401; Mayer *v.* Foulkrod, 4 Wash., 354; Fletcher *v.* Morey, 2 Story, 567; Hawshaw *v.* Parkins, 2 Swans., 546.)

Courts of equity refuse to decide upon legal titles, and all cases when there is an adequate remedy at law; because such cases are properly triable by a jury. The reason of the rule does not exist in Louisiana, for the trial by jury is not respected there, and is not allowed, except on the application of one of the parties. And it is the universal practice of the Supreme Court of the State to render final judgments, on appeal upon the law and the facts, without a *venire facias de novo*. (1 Hen. Dig., [La.,] p. 95, No. 5.)

It is therefore unreasonable to refuse equity jurisdiction in cases from Louisiana, on the ground that such cases are properly triable by jury, or because adequate remedy may be had at law in the State courts, under the State practice. Courts of equity will and ought to dismiss bills, when their decrees would be absolutely void for want of jurisdiction; but we have found no case, in the reports of England or America, where a bill has been dismissed for want of jurisdiction, on the motion of the court, on the sole ground that there was an adequate remedy at law. Many courts of the highest respectability have held, that questions of jurisdiction, founded solely on the fact that there was an adequate remedy at law, must be presented by the pleadings. (Wiswall *v.* Hall, 3 Paige, 313; Bank of Utica *v.* City of Utica, 4 Ib., 399; 2 John. Ch. R., 339; 4

Paige Ch. R., 77; 1 Baily Ch. R., 62, 113; 1 S. and Marsh. Ch. R., 5, 13.)

The jurisdiction of the court in this case has been admitted during a litigation of more than ten years. No objection to it is raised by the pleadings, or on argument in the Circuit Court or in this court. There can be no doubt that a final decree would be binding and conclusive on all the parties. If this case is dismissed on the ground of want of equity jurisdiction, prescription, as we have shown, will commence only from the date of the decree of this court, and the costs and vexation attending five suits at law will be multiplied in proportion. It is therefore to the interest, and, we understand, the desire of all parties, that this court should decide the case upon its merits, and put an end to all further litigation, in a case which seems, and in reality will be, if this bill is dismissed, interminable.

Mr. Justice CAMPBELL delivered the opinion of the court.

The appellants filed their bill to recover land within the district, in the possession of the defendants, and for an account of the rents, profits, and receipts, during the period of their occupancy. They allege that James Fletcher, their ancestor, died in 1804, leaving a valid will, by which he devised to his widow and three children the principal portion of his succession, and appointed the former the executrix. The property described in the bill had been sold in 1801, but the purchaser had not paid the price stipulated at this time. The testator directed, that if the purchaser should complete the purchase, the sum received should be put to interest, on good security, for the mother and children, until the children should attain the age of sixteen years, when the succession should be divided. In May, 1806, the executrix agreed with the purchaser to rescind the contract of sale, received a conveyance of his title to the heirs of Fletcher, and refunded to him the money he had paid, being near $4,000.

In June, 1806, the executrix filed her petition in the Superior Court of the Orleans Territory, being the court of general law, equity, and probate jurisdiction, for the Territory, in which she declares the cancellation of the contract of sale aforesaid; and to enable her to refund the money, she had borrowed that sum from Daniel Clark; that the land was unproductive, and that she was unable to pay her debt. She prayed an order for the sale of the property, to provide for the education and maintenance of her minor children, and the discharge of her debt, and to carry the will of her husband into effect respecting the disposition of the remainder of the purchase-money. The

court made the necessary order, to empower the executrix to sell and convey the lands for such price as she could obtain, and to receive the money therefor; also, to appropriate the sum necessary for the payment of her debt, and to put out the remainder at interest, as required by the will.

Daniel Clark became the purchaser at private sale from the executrix, for the sum of $9,000, and received her conveyance.

The appellants impeach this sale as unauthorized and illegal, and insist upon their title under the conveyance to them.

The defendants claim by their answers as bona fide purchasers from persons deriving their title by valid conveyances in good faith from Daniel Clark, and affirm that the family of Fletcher left the United States in 1807, and enjoyed the benefit of the money paid to the executrix; that the lands have become valuable by their improvements, and that they, and the persons under whom they claim, have held the possession since 1806. The bill was dismissed by the Circuit Court, on the ground that the remedy at law is plain, adequate, and complete, and from this decree this appeal is prosecuted.

The Supreme Court of Louisiana, in a contest between the appellants and other parties, for other lands, have decided that the executrix was not authorized to convey the shares of her minor children by private act. (Fletcher *v.* Cavelier, 4 La. R., 268; 10 La. R., 116, S. C.)

But we are relieved from the duty of applying these decisions, or inquiring into the validity of the pleas of the appellees, by the opinion we have formed concerning the jurisdiction of the court of chancery over the cause. The sixteenth section of the judiciary act of 1789 declares, "that suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate, and complete remedy may be had at law."

The bill in this cause is, in substance and legal effect, an ejectment bill. The title appears by the bill to be merely legal; the evidence to support it appears from documents accessible to either party; and no particular circumstances are stated, showing the necessity of the courts interfering, either for preventing suits or other vexation, or for preventing an injustice, irremediable at law. In Welby *v.* Duke of Rutland, (6 Bro. P. C., cas. 575,) it is stated, that the general practice of courts of equity, in not entertaining suits for establishing legal titles, is founded upon clear reasons; and the departing from that practice, where there is no necessity for so doing, would be subversive of the legal and constitutional distinctions between the different jurisdictions of law and equity; and though

the admission of a party in a suit is conclusive as to matters of fact, or may deprive him of the benefit of a privilege which, if insisted on, would exempt him from the jurisdiction of the court, yet no admission of parties can change the law, or give jurisdiction to a court in a cause of which it hath no jurisdiction.

Agreeably hereto, the established and universal practice of courts of equity is to dismiss the plaintiff's bill, if it appears to be grounded on a title merely legal, and not cognizable by them, notwithstanding the defendant has answered the bill, and insisted on matter of title. In Foley *v.* Hill, (1 Phil., 399,) Lyndhurst, Lord Chancellor, dismissed a bill upon an appeal from the Vice Chancellor upon the same grounds. He said "it was a point of great importance to the practice of the court." The objection was not made in the pleadings nor presented in the decree of the Vice Chancellor.

This decree was affirmed by the House of Lords. (2 H. L., cas. 28.) The practice of the courts of the United States corresponds with that of the chancery of Great Britain, except where it has been changed by rule, or is modified by local circumstances or local convenience. This court has denied relief in cases in equity where the remedy at law has been plain, adequate, and complete, though the question was not raised by the defendants in their pleadings, nor suggested by the counsel in their arguments. (2 Cr., 419; 7 Cr., 70, 89; 5 Pet., 496; 2 How., 383.) In Parsons *v.* Bedford, (3 Pet., 433,) the court insists on the necessity imposed on the Circuit Court in Louisiana, to maintain the distinction between the jurisdiction in which legal rights are to be ascertained, and that where equitable rights alone are recognised and equitable remedies administered.

And the result of the argument is, that whenever a court of law is competent to take cognizance of a right, and has power to proceed to a judgment which affords a plain, adequate, and complete remedy, without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by jury.

The appellants contend, that upon the pleadings and evidence a proper case for the jurisdiction of chancery appears, and that the Circuit Court *mero motu* was not warranted in dismicsing the bill: 1st. Because it is shown that in 1806 the children of Fletcher were minors, and they are authorized to call upon the defendants for an account as guardians. 2d. That the defendants being entitled to the estate of the executrix and widow, under her conveyance, the plaintiffs can maintain the bill for a partition. 3d. That the court of chancery is bet-

ter fitted to take an account for rents, profits, and improvements, and may decide the question of title as incident to the account. 4th. That a multiplicity of suits will be avoided.

There are precedents in which the right of an infant to treat a person who enters upon his estate with notice of his title, as a guardian or bailiff, and to exact an account in equity for the profits, for the whole period of his occupancy, is recognised. (Blomfield *v.* Eyre, 8 Beav., 250; Van Epps *v.* Van Deusen, 4 Paige, 64.) But in those cases the title must, if disputed, be established at law, or other grounds of jurisdiction must be shown. In the present case, the defendants have all entered upon the lands since the plaintiffs arrived at their majority. They are purchasers of adverse titles under which possession has been maintained for a long period. The bill does not recognise their title to any part of the land, and there has been no unity of possession; so that the bill cannot be maintained, either as a bill for an account on behalf of minors or for a partition. (Adams's Eq., sec. 229; 4 Rand. Va. R., 74, 493.)

Nor can the court retain the bill, under an impression that a court of chancery is better adapted for the adjustment of the account for rents, profits, and improvements. The rule of the court is, that when a suit for the recovery of the possession can be properly brought in a court of equity, and a decree is given, that court will direct an account as an incident in the cause.

But when a party has a right to a possession, which he can enforce at law, his right to the rents and profits is also a legal right, and must be enforced in the same jurisdiction. The instances where bills for an account of rents and profits have been maintained are those in which special grounds have been stated, to show that courts of law could not give a plain, adequate, and complete remedy. No instances exist where a person who had been successful at law has been allowed to file a bill for an account of rents and profits during the tortious possession held against him, or in which the complexity of the account has afforded a motive for the interposition of a court of chancery to decide the title and to adjust the account. (Dormer *v.* Fortescue, 3 Atk., 124; Barnewell *v.* Barnewell, 3 Rid. P. C., 24.) Nor does the case show that a multiplicity of suits would be avoided, or that justice could be administered with less expense and vexation in this court than a court of law.

Decree affirmed.